

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Argued - March 20, 2018

MARK C. DILLON, J.P.  
CHERYL E. CHAMBERS  
JOSEPH J. MALTESE  
BETSY BARROS, JJ.

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2016-05788

DECISION & ORDER

Rosemary Washington-Fraser, respondent, v Industrial Home for the Blind, etc., appellant.

(Index No. 44/13)

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Rutherford & Christie, LLP, New York, NY (Lauren E. Bryant and David S. Rutherford of counsel), for appellant.

Peters Berger Koshel & Goldberg, P.C., Brooklyn, NY (Marc A. Novick of counsel), for respondent.

In an action to recover damages for personal injuries, the defendant appeals from an order of the Supreme Court, Kings County (Martin M. Solomon, J.), dated May 5, 2016. The order denied the defendant's motion for summary judgment dismissing the complaint.

ORDERED that the order is affirmed, with costs.

The plaintiff allegedly sustained personal injuries when, after entering a building through an exterior door, she slipped and fell on water located on an interior staircase. The plaintiff commenced this action against the defendant, the owner of the building, to recover damages for personal injuries. The plaintiff asserted that the defendant was negligent in failing to maintain and repair the exterior door, doorway, and stairwell, which were allegedly defective. The plaintiff claimed that the allegedly defective conditions in the exterior door, doorway, and stairwell caused the staircase to become slippery by, among other things, allowing rainwater to enter through the doorway and collect on the stairs.

After the completion of discovery, the defendant moved for summary judgment dismissing the complaint, arguing that as an out-of-possession landlord, it was not responsible for the conditions that allegedly caused the accident. In support of its motion, the defendant relied upon

its lease with the nonparty tenant. The lease contained a provision obligating the defendant to maintain the interior and exterior public portions of the building, and required the nonparty tenant to make nonstructural repairs. The lease also provided that the defendant reserved the right to re-enter the premises for purposes of, inter alia, inspecting the premises and making repairs. In opposition to the defendant's motion, the plaintiff contended, among other things, that the lease required the defendant to maintain and repair the structural elements, which included the subject exterior door, doorway, and stairwell. The Supreme Court denied the defendant's motion. The defendant appeals.

“An out-of-possession landlord can be held liable for injuries that occur on its premises only if the landlord has retained control over the premises and if the landlord is contractually or statutorily obligated to repair or maintain the premises or has assumed a duty to repair or maintain the premises by virtue of a course of conduct” (*Duggan v Cronos Enters., Inc.*, 133 AD3d 564, 564; *see Davidson v Steel Equities*, 138 AD3d 911, 912). “Even if a defendant is considered an out-of-possession landlord who assumed the obligation to make repairs to its property, it cannot be held liable for injuries caused by a defective condition on the property unless it either created the condition or had actual or constructive notice of it” (*Davidson v Steel Equities*, 138 AD3d at 912).


Here, the defendant failed to demonstrate, prima facie, that it was an out-of-possession landlord that did not have a contractual duty under the lease to maintain the subject exterior door, doorway, and stairwell, or to repair the alleged defects therein that caused the plaintiff's accident (*see id.*; *Quituzaca v Tucchiarone*, 115 AD3d 924, 925-926; *Lee v Second Ave. Vil. Partners, LLC*, 100 AD3d 601, 602; *Lalicata v 39-15 Skillman Realty Co., LLC*, 63 AD3d 889). Moreover, the defendant failed to demonstrate, prima facie, that it did not create the allegedly defective conditions, and that it did not have actual or constructive notice of them (*see Davidson v Steel Equities*, 138 AD3d at 912; *Nelson v Cunningham Assoc., L.P.*, 77 AD3d 638, 639).

Since the defendant failed to establish its prima facie entitlement to judgment as a matter of law, we need not review the sufficiency of the plaintiff's opposition papers (*see Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 851).

Accordingly, we agree with the Supreme Court's determination to deny the defendant's motion for summary judgment dismissing the complaint.

DILLON, J.P., CHAMBERS, MALTESE and BARROS, JJ., concur.

ENTER:

  
Aprilanne Agostino  
Clerk of the Court